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DEC 08 2004

**OFFICE OF PETITIONS**

In re Application of :  
Eugene David Rodgers :  
Application No. 09/964,118 : ON PETITION  
Filed: 25 September, 2001 :  
Atty Docket No. 9080/23611 :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed on 12 November, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

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<sup>1</sup>Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

This application became abandoned on 20 March, 2004, for failure to timely file a reply to the final Office action mailed on 19 December, 2003, which set a three (3) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 9 August, 2004.

On 12 November, 2004, the present petition was filed, accompanied by a Request for Continued Examination (RCE) and a request for an interview as the submission required under 37 CFR 1.114.

The petition filed on 12 November, 2004, must be dismissed because the RCE is not accompanied by a submission as required by 37 CFR 1.114. In this regard, a submission as used in 37 CFR 1.114 includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability.<sup>2</sup> The definition for a "submission" in 37 CFR 1.114 is the same as the definition in 37 CFR 1.129(a).

The papers filed with the RCE and petition are styled as "Remarks" and only request an interview with the examiner. As petitioner has not provided an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability, a proper submission does not appear to have been provided.

Petitioner should submit, or identify, if previously filed, the submission required under 37 CFR 1.114 with any renewed petition.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.<sup>3</sup> The three-month extension request filed on 12 November, 2004, was submitted more than six (6) months after the mailing date of the Office action mailed on 19 December 2003, and therefore is unnecessary. The extension of time fee will be credited to counsel's deposit account, No. 20-0823 as authorized on the transmittal sheet submitted with the present petition.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>2</sup>See 37 CFR 1.114(b).

<sup>3</sup>See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

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Telephone inquiries concerning this matter may be directed to the  
undersigned at (571)272-3231.



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